

REMARKS

This is in response to the Office action mailed on May 4, 2004 in which claims 1-4 and 6-9 were rejected, claim 5 was objected to, and claims 10-15 were allowed. The applicant is appreciative of the indicated allowance of claims 10-15. Claims 10, 14 and 15 have been amended merely to enhance clarity, and claim 11 has been amended only to fix what the applicant believes is a secretary's typo. Claims 12 and 13, while dependent on the amended claims 10 and 11, have been left in their original form for issuance. The applicant respectfully requests that the Examiner allow claims 10, 11, 14 and 15 as amended. The applicant also respectfully requests that the Examiner confirm that the amendment to claims 10, 14 and 15 was merely to add clarity and the amendment to claim 11 was only to fix a typo, the nature of which as a mere typo is proven by the internal logic of the claim structure; and that the amendments to claims 10, 11, 14 and 15 are not narrowing amendments.

The applicant also includes herein certain amendments and accompanying remarks responsive to the rejection of claims 1-4 and 6-9 and the objection to claim 5, which the applicant hopes will invite the Examiner to remove these rejections and objection and allow claims 1-9 as well.

CLAIM 16 IS ALLOWABLE RESPONSIVELY TO THE OBJECTION TO CLAIM 5

Claim 5 was objected to only for depending on a rejected base claim, while indicated as allowable if rewritten in independent form to incorporate all the limitations of the base claim and intervening claims. The applicant has responded to this objection by adding new claim 16, which conforms with the Examiner's indications by including in independent format the limitations of the original claim 5 and its base claims. The applicant respectfully requests that the Examiner find that claim

16 conforms to the instructions for putting the original claim 5 in condition for allowance, and allow claim 16 accordingly.

CLAIM 9 AS AMENDED CONFORMS TO §101 AND IS ALLOWABLE

Claim 9 was rejected based on 35 U.S.C. 101 as being non-statutory subject matter, for including reference to a human body part, namely a "foot", in the claim limitations. Claim 9 has been amended, and in its amended form is not believed to make any reference to non-statutory subject matter. No other rejection of claim 9, such as based on novelty or obviousness, was presented in the Office action. The applicant therefore believes that claim 9 is currently in condition to be allowed, and respectfully requests that the Examiner take action accordingly.

CLAIMS 1-2, 4-6 AND 8 ARE NOVEL UNDER §102 AND ARE ALLOWABLE

Claims 1-2, 4, 6 and 8 were rejected based on 35 U.S.C. 102(b) due to U.S. Patent No. 3,960,027 issued to Magnuson. Claim 5 was also objected to for being based on the subject matter rejected under §102(b) due to Magnuson. The Examiner also made note of the interpretation of structure and function connected with the appearance of the term "for" in claim language. The applicant has made amendments and believes claims 1-2, 4-6 and 8 in their current form are not anticipated by Magnuson, and respectfully requests that the Examiner find accordingly and allow these claims.

Specifically, for example, claim 1 as amended has structural limitations not anticipated by Magnuson, including a pivot connection whereby the heel rest arm is pivotally mounted relative to the foot support peg about an axis positioned to permit the heel rest arm to be moved from the working position to a stored position with the heel rest arm extending along and adjacent an edge of the foot support peg, for example. Magnuson, in contrast, simply does not disclose a pivot connection whereby

the heel rest arm is pivotally mounted according to the structural limitations provided in claim 1. Instead, the component 11 of Magnuson, identified as a heel rest arm by the Examiner, is simply incapable of assuming a position with the heel rest arm extending along and adjacent an edge of the foot support peg, for example. Component 11 apparently has an axis of rotation substantially parallel to and very close to the foot support peg, in Magnuson, and therefore at no possible position in its range of motion, could component 11 extend along or adjacent to an edge of the foot support peg. This is among various rationales whereby Magnuson fails to anticipate the elements of claim 1 as amended.

As another example, claim 2 is not anticipated by Magnuson, even considering only its own elements, let alone the additional distinctions it inherits from base claim 1. As one particular example, claim 2 includes limitations directed toward a leg extending laterally from the arm such that the leg fits adjacent an end of the foot support member when the heel rest is in the stored position, as further defined by the claim. In stark contrast, component 16 of Magnuson, identified as a laterally extending heel rest arm in the Office action, cannot fit adjacent an end of component 20, identified as a foot support peg, when the alleged heel rest arm of Magnuson is in any position of which it is capable. Because component 16 is forced to rotate about the pivot axis 33 which is apparently coincident with the foot support peg in Magnuson, component 16 is mathematically constrained from approaching the foot support peg, let alone fitting adjacent an end thereof, short of first destroying the device of Magnuson. This is further illustrative of the unbridgeable contrast between Magnuson and a device according to the present claim 2, demonstrating that claim 2 is not anticipated by Magnuson.

Claims 4 and 8 each share in the novelty and lack of anticipation by Magnuson of claims 1 and 2 upon which they are based, while claim 6 shares in the novelty and lack of anticipation by Magnuson of claim 1 upon which it is based; while claims 4, 6 and 8 each also comprise their own further limitations which are not anticipated by Magnuson. Representative of these is a limitation in claim 8, wherein the heel rest wall is positioned under the foot support peg when the heel rest arm is in the stored position. Once again, analogously to some of the limitations discussed above, the component 16 of Magnuson identified in the Office action as the relevant heel rest wall component, is constrained by its rotation around an axis coinciding with the foot support peg, to be unable ever to become positioned under the foot support peg, as disclosed in claim 8, short of first destroying the Magnuson device. Magnuson clearly, then, does not anticipate the limitations of claim 8.

The remarks above are therefore illustrative of some of the many rationales whereby each of claims 1, 2, 4, 6 and 8 are novel and not anticipated by Magnuson, and the applicant believes these remarks more than suffice to establish this lack of anticipation of each of these claims, for the purposes of this response. The applicant therefore believes that claims 1, 2, 4, 6 and 8 are not anticipated by Magnuson and are in condition for allowance, and respectfully requests that the Examiner find likewise. Accordingly, since claim 5 was objected to only for being based on the originally rejected claim 4, the applicant pleads for claim 5 to be allowed together with claim 4, and along with the allowance of the related new claim 16 as discussed above.

CLAIM 3 IS NON-OBVIOUS UNDER §103 AND IS ALLOWABLE

Claim 3 was rejected based on U.S.C. 103(a) due to Magnuson in further view of U.S. Patent No. 5,673,597 issued to

Lin. The applicant believes it is not obvious, in its current form, in light of Magnuson and Lin, and respectfully requests that the Examiner find accordingly.

Specifically, for example, the amendment to claim 1 clarifies the distinctions by which Magnuson does not disclose all the limitations of claim 1. Since claim 3 includes limitations not disclosed by the combination of Magnuson and Lin, including for example the limitations of claim 1 discussed above that are not disclosed by Magnuson, there is no prima facie showing of claim 3 being obvious. Lin provides no new disclosure in respect to the distinctions referred to in claim 1, therefore the combination of Magnuson and Lin do not disclose all the elements of claim 1, let alone claim 3 which includes all the limitations of claim 1, among others. Since not all elements of claim 3 are disclosed in the combination of Magnuson and Lin, and no other mechanism has been suggested whereby additional elements of claim 3 might be disclosed, the proposed combination does not meet the requirements for a prima facie showing of obviousness under §103(a).

As another example, even if all elements of claim 3 were individually disclosed in the combination of Magnuson and Lin, which they are not, there is still no suggestion to combine Magnuson with Lin. For example, Magnuson is directed to a pedal attachment for a bicycle, while Lin is directed to a brake pedal for a motorcycle. This is a critical distinction because the function, and corresponding structure dictated by that function, of a bicycle pedal is fundamentally different from that of a motorcycle brake pedal, at least in the case of comparing Magnuson with Lin. In Magnuson, a bicycle pedal is designed for receiving the impetus of the rider's foot as part of the conduit of motion provided by the rider to the bicycle, while the pedal is driven in circles about its axis of rotation. In particular, the Magnuson device is essentially designed to encourage a better

connection between the pedal and the rider's foot, to allow the rider to impart motion to the pedal more effectively and efficiently. In contrast, the motorcycle brake pedal of Lin is designed for the rider merely to depress with her foot to engage a brake. The pedal of Lin is not intended to grip the rider's foot during an upward motion in which the foot pulls away from the pedal, as in Magnuson; or to serve as an interface for the rider to impart motion to the motorcycle.


The devices of Magnuson and Lin therefore address very different design challenges that bear no relation to each other beyond the superficial level of being interfaced by a user's foot. It is unlikely that one skilled in the art would range across fields of such obliquely related art to the degree of considering both Magnuson and Lin in addressing the design challenges of the present application. This further demonstrates that a combination of Magnuson and Lin does not act to render claim 3 obvious under §103(a). Considering the amendments and reasoning above, the applicant therefore respectfully requests that claim 3 be allowed.

In conclusion, the applicant believes the foregoing amendments and remarks confirm that claims 1-9 are in condition for allowance, as has already been indicated of claims 10-15, and respectfully requests that the Examiner allow claims 1-9 along with 10-15.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By:   
Bryan F. Erickson, Reg. No. 51,655  
Suite 1600 - International Centre  
900 Second Avenue South  
Minneapolis, Minnesota 55402-3319  
Phone: (612) 334-3222 Fax: (612) 334-3312